

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Oct 21, 2020**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JAMES BLAIS and GAIL BLAIS,

Plaintiffs,

v.

ROSS HUNTER, in his official  
capacity of Secretary of Washington  
State Department of Children, Youth  
and Families,

Defendant.

No. 2:20-cv-00187-SMJ

**SCHEDULING ORDER**

A telephonic status conference was held in the above-entitled matter on **October 20, 2020**. Todd R. McFarland and Jerome R. Aiken appeared on behalf of Plaintiffs. Andrew D. Pugsley, Carrie Hoon Wayno and Jeffrey C. Grant appeared on behalf of Defendant. A Joint Status Certificate, ECF No. 54, was filed by the parties. The Court, having reviewed the documents in the file and discussed the adoption of a scheduling order with counsel, now enters the following Scheduling Order. The dates set forth in this Order may be amended **only** by Order of the Court and upon a showing of good cause.

**IT IS ORDERED:**

**1. Rule 26(a)(1) Exchange**

1 The parties have completed their exchange of Federal Rule of Civil  
2 Procedure 26(a)(1) material.

3 **2. Mediation by Federal Magistrate Judge**

4 If the parties would like to pursue mediation before a Federal Magistrate  
5 Judge at an earlier date, the parties shall file an appropriate motion with the Court.  
6 However, if the parties elect to engage in private mediation, the mediation must be  
7 **completed** no later than ninety (90) days prior to trial.

8 **3. Add Parties, Amend Pleadings, and Class Certification**

9 The parties shall, no later than **November 9, 2020**, file any documents related  
10 to the amendment of pleadings or the addition of parties. Additionally, the parties  
11 shall file any motion for class certification no later than **November 9, 2020**.

12 **4. Rule 26(a)(2) Expert Identification and Reports**

13 **A. Generally**

14 The parties are warned that failure to timely identify experts and provide  
15 reports in accordance with Rule 26 and this Order may result in exclusion of such  
16 testimony absent good reason. *See Wong v. Regents of Univ. of Cal.*, 410 F.3d 1052  
17 (9th Cir. 2005). Additionally, Rule 26(a)(2) reports shall be emailed to the Court at  
18 [MendozaOrders@waed.uscourts.gov](mailto:MendozaOrders@waed.uscourts.gov).

19 **B. Plaintiff - Initial Expert Identification**

20 Plaintiffs shall identify experts, serve those experts' Rule 26(a)(2) reports on

1 Defendant, and email the Rule 26(a)(2) reports to the Court no later than **November**  
2 **23, 2020**. Plaintiffs shall also provide dates for which those experts can be available  
3 for deposition. Counsel must then file a notice with the Court indicating their  
4 compliance with this Order's Rule 26(a)(2) requirements.

5 **C. Defendant - Initial Expert Identification**

6 Defendant shall identify experts, serve those experts' Rule 26(a)(2) reports  
7 on Plaintiffs, and email the Rule 26(a)(2) reports to the Court no later than  
8 **November 23, 2020**. Defendant shall also provide dates for which those experts  
9 can be available for deposition. Counsel must then file a notice with the Court  
10 indicating their compliance with this Order's Rule 26(a)(2) requirements.

11 **D. Plaintiff - Rebuttal Expert Identification**

12 Plaintiffs shall identify rebuttal experts, serve those experts' Rule 26(a)(2)  
13 reports on Defendant, and email the Rule 26(a)(2) reports to the Court no later than  
14 **December 31, 2020**. Plaintiffs shall also provide dates for which those experts can  
15 be available for deposition. Counsel must then file a notice with the Court indicating  
16 their compliance with this Order's Rule 26(a)(2) requirements.

17 **5. Discovery Cutoff**

18 **A. Generally**

19 All discovery, including depositions and perpetuation depositions, shall be  
20 completed by **March 1, 2021** ("Discovery Cutoff"). The parties shall not file

1 discovery on CM/ECF except those portions necessary to support motions or  
2 objections.

3 **B. Interrogatories, Requests for Production, and Requests for**  
4 **Admission**

5 All interrogatories, requests for production, and requests for admission shall  
6 be served on the opposing party no later than seventy (70) days prior to the  
7 Discovery Cutoff. Requests for production shall be limited to thirty (30) requests,  
8 including subsections. A party needing relief from this limitation should seek relief  
9 from the Court by motion.

10 **C. Protective Orders**

11 All motions for protective orders must be filed and served no later than forty  
12 (40) days prior to the Discovery Cutoff.

13 **D. Motions to Compel**

14 All motions to compel discovery must be filed and served no later than thirty  
15 (30) days prior to the Discovery Cutoff.

16 **6. Notice of To-Be-Adjudicated Claims and Affirmative Defenses**

17 Each party shall file and serve a notice **no later than one (1) week after the**  
18 **Discovery Cutoff** indicating which previously-plead claims and/or affirmative  
19 defenses will be adjudicated at trial.

20 **7. Dispositive and *Daubert* Motions**

**A. Generally**

1 All dispositive and *Daubert* motions shall be **FILED AND SERVED** on or  
2 before **April 1, 2021**. Responses and replies to dispositive and *Daubert* motions  
3 shall be filed and served according to Local Civil Rule 7. No supplemental  
4 responses or supplemental replies to any dispositive or *Daubert* motions may be  
5 filed unless the Court grants a motion to file such documents.

6 **B. Statement of Uncontroverted Facts**

7 The parties shall also file a Joint Statement of Uncontroverted Facts **no later**  
8 **than three (3) days** (excluding federal holidays and weekends) after service of the  
9 reply, with a courtesy copy emailed to [MendozaOrders@waed.uscourts.gov](mailto:MendozaOrders@waed.uscourts.gov).

10 **C. Notice of Hearing**

11 Dispositive and *Daubert* motions shall be noted for hearing at least **fifty (50)**  
12 **days** after the date of filing. The parties will receive only one (1) hearing date per  
13 month for dispositive motions of up to five (5) issues per party.

14 **8. Certification to the State Supreme Court**

15 The parties must identify any issue of liability or damages which should be  
16 certified to the Washington State Supreme Court no later than the date for the filing  
17 of dispositive motions.

18 **9. Motion Practice**

19 **A. Notice of Hearing**

20 All matters requiring Court action must be filed and noted for hearing in

1 accordance with Local Civil Rule 7. This includes stipulated or agreed motions and  
2 proposed orders. If a party seeks oral argument, counsel shall contact the Courtroom  
3 Deputy at 509-943-8173 to obtain a hearing date and time. **Absent exceptional**  
4 **circumstances, all hearings with oral argument will occur in Court and not by**  
5 **telephone or video conference.**

6 ***B. Witness Testimony***

7 At any hearing, including trial, in which witness testimony is given, the  
8 witness must testify in Court and may not appear by telephone or video conference,  
9 absent exceptional circumstances.

10 ***C. Citing Previously-Filed Documents***

11 When a party references a document previously filed with or by the Court,  
12 the party shall cite to the document by the record number given to the document by  
13 the Clerk of the Court (e.g., ECF No. 43). Furthermore, because the Court is able to  
14 easily review previously filed court records, no such documents shall be attached  
15 as exhibits to any filing.

16 ***D. Reliance on Deposition Testimony***

17 When a party relies on deposition testimony to support a position it takes in  
18 support or opposition to an issue, that party shall provide the Court with only the  
19 pertinent excerpts of the deposition testimony relied upon and shall cite to page and  
20 line numbers of the deposition it believes supports its position. *See generally* LCivR

1 56(c)(1), (e). Submission of the entire deposition and/or failure to cite to specific  
2 portions of the deposition may result in the submission being stricken from the  
3 record. *See Orr v. Bank of Am*, 285 F.3d 764, 774–75 (9th Cir. 2002).

4 In addition, if both parties submit excerpts from the same deposition, they  
5 shall meet and confer to develop a “master” deposition submission, which identifies  
6 for the Court the deposition excerpts relied upon by each party. Plaintiffs shall  
7 highlight excerpts in yellow and Defendant shall highlight excerpts in blue;  
8 testimony relied upon by both parties shall be underlined. Master deposition  
9 submissions shall be filed no later than three (3) days after service of the reply.

#### 10 ***E. Supplemental Responses or Replies***

11 No supplemental responses or supplemental replies to any motion may be  
12 filed unless the Court grants a motion to file such documents.

#### 13 ***F. Motions to Reconsider***

14 Although motions to reconsider are disfavored, any such motion shall be filed  
15 no later than fourteen (14) days after the filing date of the order that is the subject  
16 of the motion and shall be noted for hearing **without oral argument**. No responses  
17 or replies to motions to reconsider shall be filed unless the Court expressly requests  
18 responses or replies. Counsel shall follow Civil Rule 7(h) of the Local Rules for the  
19 United States District Court for the **Western District of Washington**. **Motions to**  
20 **reconsider shall not exceed five (5) pages.**

**G. Requests to Strike Material Contained in Motion or Briefs**

Requests to strike material contained in or attached to submissions of opposing parties shall not be presented in a separate motion to strike, but shall instead be included in the responsive brief, and will be considered with the underlying motion. The single exception to this rule is for requests to strike material contained in or attached to a reply brief, in which case the opposing party may file a surreply requesting that the Court strike the material, subject to the following: (i) that party must file a notice of intent to file a surreply as soon after receiving the reply brief as practicable; (ii) the surreply must be filed within five (5) days of the filing of the reply brief, and shall be strictly limited to addressing the request to strike; any extraneous argument or a surreply filed for any other reason will not be considered; (iii) the surreply shall not exceed three (3) pages; and (iv) no response shall be filed unless requested by the Court.

This does not limit a party's ability to file a motion to strike otherwise permitted by the Federal Rules of Civil Procedure, including Rule 12(f) motions to strike material in pleadings. The term "pleadings" is defined in Rule 7(a).

**H. Decisions on Motions**

The parties and counsel may call the Judge's chambers at 509-943-8160 to inquire about the status of a decision on a motion if the Court has not issued an order within thirty (30) days of the motion's hearing date.



1           **10.   Witness and Exhibit Lists**

2           Witness and exhibit lists shall be filed and served, and exhibits shall be made  
3 available for inspection or copies shall be provided to the parties, no later than **June**  
4 **11, 2021.**

5                   **A.    Witness Lists**

6           Witness lists shall include a brief description of the witness, a brief summary  
7 of the witness's anticipated testimony, whether the witness will be called as an  
8 expert, and any known trial date or time conflicts that witness has.

9                   **B.    Exhibit Lists**

10          Exhibit lists shall include a brief description of the exhibit. Additionally, all  
11 exhibits shall be pre-marked for identification; exhibits for Plaintiffs shall be  
12 numbered 1–499 and exhibits for Defendant shall be numbered 500–999.

13                  **C.    Objections**

14          Objections to witnesses or exhibits shall be filed and served on or before **June**  
15 **18, 2021, and shall be heard at the pretrial conference.** All objections to  
16 witnesses shall set forth a legal basis and explanation for the objection. Objections  
17 to an exhibit, or portion thereof, shall be accompanied by a full and complete copy  
18 of the exhibit in question and a short legal explanation for the objection. The party  
19 seeking admission of the witness or exhibit has five (5) days, excluding federal  
20 holidays and weekends, to file a response to the opposing party's objection; no reply

1 shall be filed.

2 **D. Exhibits Without Objection**

3 Counsel shall prepare and file a list of all exhibits which will be admitted  
4 without objection no later than **August 4, 2021**.

5 **11. Deposition Designations**

6 **A. Generally**

7 Designation of substantive, as opposed to impeachment, deposition or prior  
8 testimony to be used at trial shall be highlighted—in yellow by Plaintiffs or in blue  
9 by Defendant—and each party shall serve a complete, highlighted transcript of the  
10 deposition or prior testimony on or before **June 11, 2021**.

11 **B. Cross-Designations**

12 Cross-designations shall be highlighted—in yellow by Plaintiffs or in blue  
13 by Defendant—in the transcript containing the opposing party's initial designations,  
14 and shall be served on or before **June 25, 2021**.

15 **C. Objections**

16 All objections to designated deposition or prior testimony and the legal bases  
17 for the objections, shall be filed and served on or before **July 2, 2021**. Any  
18 designated deposition or prior testimony objected to shall be underlined in black in  
19 a complete yellow and blue highlighted copy of the deposition or prior testimony  
20 transcript described above. A paper copy of the underlined document shall be filed

1 and served with the objections. The party seeking admission of the testimony has  
2 five (5) days, excluding federal holidays and weekends, to file a response; no reply  
3 shall be filed. If the deposition was video recorded and the recording is to be used  
4 at trial, the party seeking to use the recorded deposition shall indicate the relevant  
5 portion on both the written transcript and the recording. Similarly, objections shall  
6 be made on the written transcript as explained above along with the applicable time  
7 stamp on the video recording noted. All objections to deposition and prior testimony  
8 designations shall be heard and resolved at the pretrial conference with the video  
9 recording available for display.

## 10 **12. Motions *in Limine***

11 All unresolved substantive or evidentiary issues that may foreseeably arise  
12 during trial shall be addressed by motions *in limine* to be filed and served on or  
13 before **June 18, 2021**. Such motions will be addressed and resolved at the pretrial  
14 conference. However, motions *in limine* may not reargue issues already decided by  
15 the Court.

## 16 **13. Pretrial Order**

### 17 **A. Generally**

18 A Joint Proposed Pretrial Order prepared in accordance with Local Civil Rule  
19 16(e) shall be filed on or before **June 22, 2021**. Counsel are instructed to email the  
20 proposed order, in Microsoft Word or text-only format, to

[MendozaOrders@waed.uscourts.gov](mailto:MendozaOrders@waed.uscourts.gov).

**B. Exhibit List**

The list of exhibits contained in the Joint Proposed Pretrial Order shall reflect the exhibit marking scheme described above. In preparing the Joint Proposed Pretrial Order, the parties shall confer regarding duplicative exhibits and determine which party will submit such exhibits for trial.

**14. Pretrial Conference**

An **in-person** pretrial conference will be held at **10:30 A.M. on July 6, 2021**, in **Spokane**, Washington. All counsel trying the case must be present at the pretrial conference.

**15. Trial Briefs; Proposed Findings of Fact and Conclusions of Law**

**A. Generally**

By no later than **August 4, 2021**, each party shall file and serve its trial brief and its proposed findings of fact and conclusions of law.

**B. Trial Brief Length**

Trial briefs shall not exceed twenty (20) pages without prior Court approval. To obtain such approval, a party must file a motion to file an over-length brief, demonstrating good cause why supplemental briefing is necessary.

**C. Courtesy Copies**

Counsel are instructed to email courtesy copies of their proposed findings of

fact and conclusions of law, in Microsoft Word or text-only format, to [MendozaOrders@waed.uscourts.gov](mailto:MendozaOrders@waed.uscourts.gov).

**16. Trial**

The estimated **5-day BENCH TRIAL** shall commence at **9:00 A.M.** on **August 16, 2021**, in **Spokane**, Washington. The **final** pretrial conference will begin at **8:30 AM**.

**17. General Court Protocol**

**A. Conduct of Counsel**

Counsel are to read and abide by Local Civil Rule 83.1 and Washington Rule of Professional Conduct 3.4.

**B. Exhibits at Hearings**

In accordance with Local Civil Rule 83.1(f), each party shall bring to any hearing on the merits, photocopies of their relevant pre-marked exhibits for the Court, opposing counsel, and testifying witness, unless it is not possible to do so because of the nature of an exhibit. Photocopies for these different individuals are to be organized into separate binders by exhibit number.

**C. Time Sensitive Material**

Any time-sensitive materials should be faxed to the Judge's chambers at 509-943-8161.

**D. Emailing the Court**

Whenever a party emails documents, as required by the Court, to [MendozaOrders@waed.uscourts.gov](mailto:MendozaOrders@waed.uscourts.gov), those documents shall be in Microsoft Word or text-only format. Additionally, the subject line of the email shall be as follows:  
[Case Name; Case Number; Document Title; Label for Attached Document].

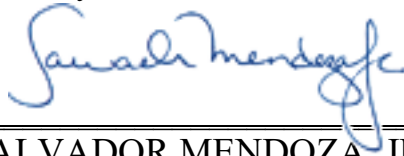
### 18. Summary of Deadlines

Rule 26(a)(1) exchange	<b>Completed</b>
Deadline to add parties, amend pleadings, and file for class certification	<b>November 9, 2020</b>
Rule 26(a)(2) expert reports produced to other parties and emailed to the Court:	
Plaintiffs – Initial Experts:	<b>November 23, 2020</b>
Defendant – Initial Experts:	<b>November 23, 2020</b>
Plaintiffs – Rebuttal Experts:	<b>December 31, 2020</b>
All interrogatories, requests for production, and requests for admission, served	<b>70 Days Before Discovery Cutoff</b>
Motions for protective orders filed	<b>40 Days Before Discovery Cutoff</b>
Motions to compel discovery filed	<b>30 Days Before Discovery Cutoff</b>
<b>Discovery Cutoff</b>	<b>March 1, 2021</b>
Notice of to-be-adjudicated claims and affirmative defenses filed	<b>1 Week After Discovery Cutoff</b>
All dispositive, <i>Daubert</i> , and state certification motions filed	<b>April 1, 2021</b>
Witness and exhibit lists:	
Lists filed and served:	<b>June 11, 2021</b>
Objections filed and served:	<b>June 18, 2021</b>
Deposition designations:	
Designated transcripts served:	<b>June 11, 2021</b>
Cross-designations served:	<b>June 25, 2021</b>
Objections filed and served:	<b>July 2, 2021</b>
All motions <i>in limine</i> filed	<b>June 18, 2021</b>
Joint Proposed Pretrial Order filed and emailed to the Court	<b>June 22, 2021</b>

<b>PRETRIAL CONFERENCE</b>	<b>July 6, 2021 10:30 A.M. - Spokane</b>
Trial briefs, findings of fact and conclusions of law, and list of exhibits admitted without objection, filed and emailed to the Court	<b>August 4, 2021</b>
Mediation, if any, must be completed by	<b>90 Days Before Trial</b>
<b>BENCH TRIAL</b>	<b>August 16, 2021 9:00 A.M. - Spokane</b>

**IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and provide copies to all counsel.

**DATED** this 21<sup>st</sup> day of October 2020.



SALVADOR MENDOZA, JR.  
United States District Judge